

NTSB Order No. EA-5379

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of April, 2008

Respondent .

Docket SE-17479

We previously addressed and rejected respondent's argument that he was entitled to immunity from enforcement action based on his employer's voluntary self-disclosure of violations under FAA Advisory Circular (AC) 00-58, *Voluntary Disclosure Reporting*

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Program.¹ One aspect of his argument, however, deserves further comment. Respondent argues that, unlike the circumstances in Administrator v. Liotta,² in the instant case the Administrator "accepted [voluntary disclosure] and committed herself to no '... legal enforcement action.'" Respondent's argument is hollow. While the Administrator may have "accepted" the disclosure for respondent's employer, against whom no enforcement action was pursued, respondent was not included. As noted in Liotta, any immunity that might inure to the employer does not extend to employees absent fulfillment of the conditions enumerated in the advisory circular.

We have considered respondent's other arguments, and find that they are generally duplicative of those in his appeal, or contain nothing that would cause us to reverse or modify our previous decision.³ To the extent that respondent seeks to raise new issues for the first time in his petition for reconsideration without, among other things, showing that they could not have been discovered and raised by the exercise of due diligence before the date the case was submitted to the Board, they are rejected. See 49 C.F.R. § 821.50(c).⁴

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above order.

¹ See 49 C.F.R. § 821.50, which provides, in part, at subsection (d), "Repetitious petitions will not be entertained by the Board, and will be summarily dismissed."

² NTSB Order No. EA-5297 (2007).

³ One of respondent's arguments challenges the Board's conclusion that a § 91.13(a) charge is proved when an operational violation has been charged and proved. It is well settled that a charge under § 91.13(a) is proved when an operational violation has been charged and proved. See Administrator v. Seyb, NTSB Order No. EA-5024 at 4 (2003). This is referred to as a "residual" or "derivative" careless or reckless violation. The cases that have established this policy are numerous. See, e.g., Administrator v. Pritchett, 7 NTSB 784, n.17 (1991); Administrator v. Dutton, 7 NTSB 521, 523 (1990).

⁴ Respondent also notes that the opinion and order in his case contains the conjunction "and" rather than the correct "or" in the phrase "careless or reckless." We correct this error with an errata served in conjunction with this order.